IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.325 of 2005.

Date of decision: October 22, 2007.

Than Bahadur. ……. Appellant.

Vs.

State of Himachal Pradesh. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. Anup Chitkara, Advocate.

For the respondent: Mr. S.D. Vasudeva, Addl. Advocate General with Mr. D.S. Nainta, Dy. Advocate General.

Surjit Singh, J (oral):

Heard and gone through the record.

Appellant has been convicted of an offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for 14 years and to pay a fine of Rs.1,40,000/-, for allegedly being in possession of 4.50 Kilo grams of **Charas**. Charas was recovered from the appellant, as per prosecution version, during a naka organized by the Incharge, Police Post, Jari on 19th July, 2003. Appellant was intercepted at the site of naka. He was found to be carrying a bag which contained three packets of Charas in the form of Chapattis. The stuff was weighed and found to be 4.50 kilograms. Two samples, each weighing 25 grams, were separated and sealed in

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Whether reporters of local Papers may be allowed to see the judgment? .

two separate packets. Bulk stuff was made into another parcel. That too was sealed with the same seal as the two sample packets. One of the two sample parts was sent to the Chemical Examiner, who reported that it contained 32.64 per cent resin and Beams Alkaline test was also found to be positive and thus the sample stuff had contents of Charas. On the receipt of the report of the Chemical Examiner, appellant was sent up for trial.

Trial court charge-sheeted the appellant and on his pleading not guilty put him on trial. At the end of the trial, appellant was found guilty and consequently convicted and sentenced, as aforesaid.

The only submission that has been made on behalf of the appellant is that the entire quantity of the stuff recovered from the appellant cannot be treated Charas in view of the law laid down by the Division Bench of this court in **Dharam Pal** v **State of H.P. and another (Latest HLJ 2007 (HP) 827)** and that the quantity of the Charas contained in the recovered stuff has to be worked out in accordance with the percentage of resin found in the sample by the Chemical Examiner. We agree with the aforesaid submission of the learned counsel, because in the aforesaid judgment relied upon by the learned counsel, it has been held that only the resin content of the stuff is Charas, in view of the definition of Charas, given in Section 2(iii)(a) of the Narcotic Drugs and Psychotropic Substances Act. As already noticed, the Chemical Examiner has opined that the sample contained 32.64 per cent resin. The total quantity of the recovered stuff is 4.50 kilograms. That means the resin content in the recovered stuff was 1.469 grams approximately. Learned counsel says that the punishment should commensurate with the quantity of the stuff, as worked out on the basis of the percentage

of resin found in the recovered stuff. The submission is not without merit.

As a result of the above stated position, we partly accept the appeal. While the conviction of the appellant for offence under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act is upheld, because the quantity of the resin content in the recovered stuff is also 'commercial quantity', we reduce the sentence to 10 years rigorous imprisonment and fine of Rs.1,00,000/-, in default of payment of fine, to rigorous imprisonment for a further period of one year.

The matter is disposed of accordingly.

(Surjit Singh)
Judge.

October 22, 2007.
(PDS)

(Surinder Singh)
Judge.